



April 16, 1999

Mr. Jack W. Naranjo
Assistant City Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR99-1035

Dear Mr. Naranjo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123545.

The City of Arlington (the city) received a request for information concerning the repair and maintenance of a sewer line within a mile of a specific residence. You contend that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.¹ Open Records Decision No. 555 (1990); see Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated").

¹In addition, this office has concluded that litigation was reasonable anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, see Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, see Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, see Open Records Decision No. 288 (1981).

On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You argue that litigation is reasonably anticipated in this instance because the requestor has alleged that the city is responsible for damages made to the property which is the subject of this request. You state that the requestor has demanded that the city pay for alleged damages caused by city maintenance work on the sewer line. You have provided this office with a copy of the demand letter. You additionally indicate that the requestor has standing to bring a subrogation claim for the alleged damages. You do not, however, represent that the claim is in compliance with the notice requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance. *See* Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance shows that litigation is reasonably anticipated). The requestor has not threatened to sue the city. *See* Open Records Decision No. 361 at 2 (1983). Nor have you indicated that the city will deny the claim. We conclude that you have failed to demonstrate that litigation is reasonably anticipated and, therefore, you must release the requested information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/eaf

Ref.: ID# 123545

Encl: Submitted documents

cc: Ms. Nancy Fuller
State Farm Insurance Company
P.O. Box 154409
Irving, Texas 75015-4409
(w/o enclosures)